

Up in Smoke: Medical Marijuana and Post-Acute Care

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Marijuana, Hemp, CBD... What's the Difference?

All three derive from the Cannabis plant, and the main difference is the amount of THC present.

- ▶ Marijuana is cannabis that has **more** than 0.3% THC by dry weight. Many have found marijuana to produce both physical and mental health benefits, despite the federal government recognizing no health purpose with marijuana.



Marijuana, Hemp, CBD... What's the Difference?

- ▶ **CBD** is a cannabinoid that is found in all cannabis plants, and can be derived from either hemp or marijuana. Often used to produce physical benefits. CBD is only legal on a federal level if it is derived from hemp and contains less than 0.3% of THC.



Marijuana, Hemp, CBD... What's the Difference?

- ▶ **Hemp** is cannabis that contains a 0.3% or less THC content by dry weight. Hemp is often used for industrial products, such as paper, textiles, or fuel. However, it can also be used for medicinal purposes.



What is THC?

- ▶ THC, the main distinction between Marijuana, Hemp, and CBD, is the psychoactive compound found in Cannabis plants.
- ▶ THC is often associated with the “high” experienced by individuals who partake in marijuana.
- ▶ Less than 0.3% THC often does not lead to any psychoactive changes in the user.



Legality of Cannabis

- ▶ Currently, Marijuana is illegal on a federal level, despite 36 states and 4 territories allowing for Medical Marijuana.
- ▶ As of 2018, Hemp is legal on a federal level. The 2018 Farm Bill allows hemp containing less than 0.3% THC to be grown throughout the United States.
- ▶ The 2018 Farm Bill also legalized CBD products that are derived from hemp and containing less than 0.3% THC.



Cannabis as Treatment for Medical Conditions

- ▶ In 2018, the FDA approved Epidiolex, a form of CBD, as treatment for two rare forms of epilepsy, Lennox-Gastaut syndrome, and Dravet syndrome.
- ▶ Despite a lack of approval from the FDA, studies show that medical cannabis can treat/alleviate several conditions, such as cancer and chronic pain.

Marijuana use in Hospice, Home Health, and Long-Term Care

- ▶ In a 2019 study with palliative care professionals, an overwhelming 91% stated that they supported medical marijuana use for hospice patients.
- ▶ Studies show that many patients in a palliative care setting who are currently on long-term opioids for chronic pain could potentially be treated with either cannabis alone or in combination with a lower dose of opioids.
- ▶ Most facilities are operating on a “don’t ask, don’t tell” policy.

Disposal of Medical Marijuana Waste

- ▶ Similar to pharmaceutical waste disposal.
- ▶ Most states require the marijuana to be rendered “unusable” by different methods.
- ▶ Recommendations
 - ▶ Use Spill and Leak-proof waste containers.
 - ▶ Partner with a medical waste disposal provider.

Mississippi Law on Hemp

- ▶ While MS has a hemp program through the MS Department of Agriculture, the state has not funded the program. Therefore, those who wish to grow hemp in Mississippi are regulated by the federal government under the 2018 Farm Bill.
- ▶ Must apply through the federal program to receive license to grow hemp.



Mississippi Law on Medical Marijuana

- ▶ Mississippi citizens voted Initiative 65, a Medical Marijuana Program, into its constitution in November 2020.
- ▶ In May 2021, the Mississippi Supreme Court overturned Initiative 65 on a technicality regarding the process of obtaining signatures.
- ▶ As of June 2021, Mississippi's governor, Tate Reeves, has said he is willing to call a special session to address a medical marijuana program, but only if the legislators can agree on an appropriate program.
- ▶ Despite this setback, we can still address the proposed program from Initiative 65 and the MS Department of Health.



Initiative 65

- ▶ Adopted as a Mississippi Constitutional Amendment in November 2020.
- ▶ Provides civil and criminal protections to patients, caregivers, and physicians for the use and recommendation of medical marijuana.
- ▶ Patients only qualify if they have one of the 22 debilitating conditions.



Who can recommend Medical Marijuana?

- ▶ Initiative 65 states that only physicians are able to certify a patient for the use of Medical Marijuana.
- ▶ The initiative defines a physician as one who has a “valid **Doctor of Medicine** or **Doctor of Osteopathic Medicine** degree” and “who holds an unrestricted license to practice medicine in the state of Mississippi.”
- ▶ Must recommend for conditions in their specialty?



How do MS Physicians feel about Medical Marijuana?

- ▶ Dr. Jennifer Bryan, chair of the Mississippi State Medical Association and Dr. Scott Hambleton Director of the Mississippi Physician's Health program have stated that **they did not support** Initiative 65 because the research on the efficacy of medical marijuana is very limited and that medical marijuana has “severe, detrimental effects” on the users. They are quoted: “Marijuana is not a medicine. It is a product that should be researched.”



What is a physician certification?

- ▶ The Mississippi Department of Health will approve a form that is to be signed and dated by a physician that certifies that a person suffers from a debilitating condition that medical marijuana will help.
- ▶ The certification is only effective for 12 months and must be renewed.
 - ▶ Physicians are able to designate a shorter period of time.
- ▶ Certifications can only be issued after an **in-person examination** in Mississippi.
- ▶ For minors, the parent or guardian must be present and give written consent for the certification to be valid.
- ▶ Physicians are **never required** to issue a certification.



Which debilitating conditions can a physician certify?

- ▶ Cancer
- ▶ Epilepsy or other seizures
- ▶ Parkinson's Disease
- ▶ Huntington's Disease
- ▶ Muscular dystrophy
- ▶ Multiple sclerosis
- ▶ Cachexia
- ▶ Post-Traumatic Stress Disorder
- ▶ Positive Status for Human Immunodeficiency Virus
- ▶ Acquired Immune Deficiency Syndrome
- ▶ Chronic or Debilitating pain
- ▶ Amyotrophic Lateral Sclerosis
- ▶ Glaucoma
- ▶ Agitation of Dementias
- ▶ Crohn's Disease
- ▶ Ulcerative Colitis
- ▶ Sickle-cell anemia
- ▶ Autism with aggressive or self-injurious behaviors
- ▶ Pain refractory to appropriate opioid management
- ▶ Spinal cord disease or severe injury
- ▶ Intractable nausea
- ▶ Severe muscle spasticity
- ▶ **Any other medical condition in same kind or class that a physician believes the benefits of medical marijuana outweigh the risks**



Proposed Regulations for Hospice, Home Health, and Long-Term Care in Mississippi

- ▶ All long-term care settings will have to be approved by the Department of Health as a Caregiver Institution/Program and obtain a Caregiver Institution/Program Identification card in order to participate in the medical marijuana program.
- ▶ Long-term care settings can adopt reasonable written requirements that limit the use of medical marijuana in their facilities.
- ▶ However, these long-term care settings cannot unreasonably limit a qualified patient's access to or use of medical marijuana authorized by the medical marijuana program **unless** failing to do so would cause long-term care setting to lose a **monetary or licensing-related benefit under federal law.** (e.g. Medicare or Medicaid)

Critical Issues in Mississippi

- ▶ When will the State implement a medical marijuana program?
- ▶ Will that program look like initiative 65?
- ▶ Will the qualifying conditions remain the same?
- ▶ Who will be allowed to certify a patient?
- ▶ Can Hospices/Long-Term Care Facilities allow medical marijuana use?



Louisiana Law on Hemp

- ▶ Louisiana has its own, fully funded industrial hemp program, not needing to operate through the federal government.
- ▶ Applicants will submit applications to the Louisiana Department of Agriculture and Forestry for licenses.



Louisiana Law

- ▶ Louisiana's Therapeutic Marijuana Act was enacted in 1978, but remains one of the more restrictive Medical Marijuana Programs in the country.
- ▶ Only a limited number of pharmacies (no more than 10) in Louisiana are permitted to sell and distribute 2.5 ounces of medical marijuana within 14 days.
- ▶ However, as of August 1 2020, physicians in Louisiana can now recommend medical marijuana for “any condition that they, in their medical opinion, consider debilitating to an individual patient.”
- ▶ Louisiana recently expanded program to allow smoking of medical marijuana.
- ▶ The Louisiana Department of Agriculture and Forestry leads the regulatory agency for licensure and production of medical marijuana.
- ▶ The Louisiana Board of Pharmacy operates the regulatory body of dispensing and acquiring medical marijuana.



Louisiana Growers

- ▶ Louisiana's Medical Marijuana Program only allowed for two growers: Louisiana State University and Southern University.
- ▶ LSU: Wellcanna Plus
- ▶ Southern: Illera Holistic Healthcare



Louisiana's Dispensing Pharmacies

- ▶ Region 1 ~ Metropolitan - H & W Drug Store, Inc. located in **New Orleans**
- ▶ Region 2 ~ Capitol - Capitol Wellness Solutions, LLC, located in **Baton Rouge**
- ▶ Region 3 ~ Teche - Green Leaf Dispensary, LLC, located in **Houma**
- ▶ Region 4 ~ Acadian - The Apothecary Shoppe, LLC, located in **Lafayette**
- ▶ Region 5 ~ Southwest - Medicis, LLC, located in **Lake Charles**
- ▶ Region 6 ~ Central - The Medicine Cabinet Pharmacy, LLC, located in **Alexandria**
- ▶ Region 7 ~ Northwest - Hope Pharmacy, LLC, located in **Shreveport**
- ▶ Region 8 ~ Northeast - Delta Medmar, LLC, located in **West Monroe**
- ▶ Region 9 ~ Southeast - Willow Pharmacy, LLC, located in **Madisonville**



Who can recommend medical marijuana?

- ▶ Any physician licensed by and in good standing with the Louisiana Board of Medical Examiners.
- ▶ There is no requirement that the physician be acting “within his specialty,” only that there be a “bona-fide doctor-patient relationship.” La. Stat. Ann. § 40:1046
- ▶ Bona-Fide Physician Patient Relationship looks like:
 - ▶ At least one in-person examination
 - ▶ Physician maintains a medical record
 - ▶ Physician is responsible for ongoing assessment, care, and treatment of patient’s qualifying medical condition



Qualifying Conditions

▶ 1978

- ▶ Cancer
- ▶ Glaucoma

▶ 1991

- ▶ Added spastic quadriplegia

▶ 2015

- ▶ HIV/AIDs
- ▶ cachexia or wasting disorder
- ▶ seizure disorders (including but not limited to epilepsy)
- ▶ Spasticity
- ▶ Crohn's disease
- ▶ muscular dystrophy
- ▶ severe muscle spasms

- ▶ Parkinson's disease
- ▶ post-traumatic stress disorder
- ▶ multiple sclerosis
- ▶ intractable pain
- ▶ Alzheimer's
- ▶ ALS
- ▶ traumatic brain injury
- ▶ Concussion
- ▶ chronic pain associated with either fibromyalgia or sickle cell disease
- ▶ conditions resulting in the patient receiving hospice care or palliative care
- ▶ in some cases, autism



Medical Marijuana in Hospice, Home Health, and Long-term care facilities in Louisiana

- ▶ According to our contacts at the Louisiana Department of Health, and the different associations, no nursing home or hospice organization has reached out regarding Medical Marijuana.
- ▶ Currently, there are no guidelines or regulations regarding long-term care/hospice and medical marijuana in Louisiana.



Noteworthy Issues

- ▶ How does participating in a medical marijuana program effect your enrollment in Medicare and Medicaid?
- ▶ Does a refusal to participate in a medical marijuana program violate your residents' rights?



Medicare and Medicaid

- ▶ Facilities that participate in Federal Medicare and joint Federal/State Medicaid programs, as a requirement of participation, agree to comply with **all Federal** and State law.
- ▶ Marijuana remains an illegal Schedule I drug under federal law.
- ▶ A facility must develop **clear policies** based on how risk-averse they are in relation to prosecution for participating in a medical marijuana program.
- ▶ However, be aware that the DOJ is not able to bring charges against those participating in a medical marijuana program if **the participants are in strict compliance with that state's law.** (See Hinchey-Rohrabacher Amendment and *United States v. McIntosh*)



Risk Tolerance and Example Policies-- Low

- ▶ If your facility is extremely concerned about the risk of participating in a Medical Marijuana program, these are examples from other states regarding Medical Marijuana in Long-term Care or Hospice.
 - ▶ Exclude ALL Marijuana
 - ▶ Advise Residents of Policy prior to admission
 - ▶ Implement your policies immediately
 - ▶ A “NO SMOKING” Policy may not be enough to satisfy this
 - ▶ Require prescriptions to be “no illegal drugs” including Medical Marijuana of all kinds
 - ▶ No personal caregivers



Risk Tolerance and Example Policies-- Moderate

- ▶ If you are somewhat tolerant of risk, these are examples of policies from other states:
 - ▶ No smoking, only allow edibles or applied
 - ▶ Evaluate BEFORE use if you want to require self-administration
 - ▶ Resident is responsible for storing medical marijuana offsite
 - ▶ Only allowed in a private room
 - ▶ Never allowed to drive or operate a vehicle/cart
 - ▶ No employees as caregivers

Risk Tolerance and Example Policies— High

- ▶ If you are going to participate in a medical marijuana program, below are some example policies and procedures you should consider:
 - ▶ Extensively train your staff
 - ▶ No sharing or partaking in Resident's Marijuana
 - ▶ Ensure staff are aware of effects of marijuana
 - ▶ Contact the physician to ensure no drug interactions



Other States' Approach to Medical Marijuana in Hospices, Home Health, and Long-Term Care

▶ **Washington**

- ▶ Medicare and Medicaid funds cannot be used directly or indirectly for activities or expenses related to use of Medical Marijuana.
- ▶ States will not cite facilities as long as the facility ensures the residents are safe and have clear use policies.

▶ **Colorado**

- ▶ Communities should have strong policies and procedures if they are going to allow Medical Marijuana.

▶ **California**

- ▶ Medical Marijuana is to be treated as a medication.
- ▶ Smoking form is subject to all smoking laws and restrictions.
- ▶ Facility must comply with storage, administration, and documentation regulations.
- ▶ Community can decide to admit or retain resident based on health and safety of individual and other residents and stipulate such conditions in admission contract.



Residents' Rights?

- ▶ Even though Resident Rights (42 CFR §418.52(c)) provides Residents with the right to receive effective pain management and symptom control, among other rights—Medical Marijuana **is still illegal under Federal Law.**
- ▶ With the right to effective pain management, and marijuana being a good source of effective pain management, Residents' rights could be violated here.
- ▶ There is not a clear answer on whether a refusal to allow medical marijuana would violate Hospice Residents' rights, but it is safest for facilities to assess the individual patient's needs and institutional liabilities.



Testimonials

Mary, 76

Summerfield Medical Marijuana Doctor

- 6 months on medical cannabis
- Back Pain, sleeping problems

Pain kept me awake at night. I seldom got a full night's sleep. My doctor gave me a prescription drug and it helped but when I wanted to stop using it I found I had to detox myself. I applied for the medical marijuana and pain reduced bit time. Now I can relax and sleep, now I can volunteer and do all the activities I love.



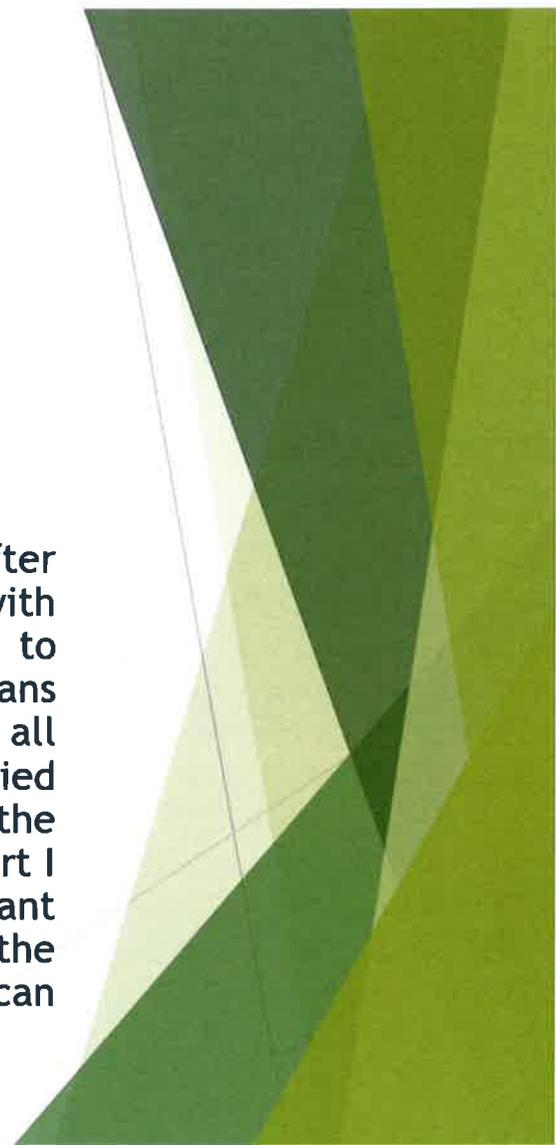
Testimonials

S.B. 78

St. Petersburg Medical Marijuana Clinic

- 3 months on medical cannabis
- Cancer
- Previously treated with traditional pain medication

For the past three years I have been plagued with physical problems after leading a very healthy lifestyle with no problems at all. Diagnosed with cancer and three days later was told to have back surgery. In addition to that, I was diagnosed with neuropathy in both legs. Saw several physicians and neurologists. The pain in my back and legs was excruciating. Tried all the mainstream medicine. ALL of them made me loopy and miserable. Tried medical marijuana and tried all sorts of combinations thinking THC was the answer to my pain. Didn't happen. Got very frustrated and as a last resort I tried a 40:1 combination, with CBD being the dominant ingredient. Instant relief for night time sleep. Still working in combination to use during the day without making me sleepy. Pain never goes away completely but I can say the pain is down by about 30 to 40%.



Testimonials

J.W., 70

St. Petersburg Medical Marijuana Doctor

- 8 months on medical cannabis
- Degenerative Disc Disorder

Helps me relax. Need less opiates. Higher pain threshold. Helps my pain a lot.



Questions?

- If you have questions regarding the proposed MS regulations for the Medical Marijuana program, please contact us after the presentation. We worked closely with the MS Department of Health to obtain all of the proposed regulations.
- We also have connections with Louisiana's Hospice and Long Term Care Associations, so please reach out with any questions.

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